

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 4/22/2014	(3) CONTACT/PHONE Brian Pedrotti, Planner III / 805-788-2788	
(4) SUBJECT Hearing to consider an appeal by Integrity SLO of the Planning Commission's: 1) approval of Tentative Tract Map 2993 and Conditional Use Permit (SUB2008-00028) for a cluster subdivision of twenty-one parcels of one acre each and two open space parcels of 21.2 and 14.6 acres located on Zenon Way east of Palo Mesa and 2) adoption of the Mitigated Negative Declaration prepared for this project pursuant to the California Environmental Quality Act. District 4.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> <li>1. Hold the public hearing on the appeal of the approval of Tentative Tract Map 2993 and Conditional Use Permit (SUB2008-00028) by the Planning Commission as set forth in the attached Exhibits and staff report.</li> <li>2. Adopt and instruct the chairman to sign the resolution affirming the decision of the Planning Commission and approving the Mitigated Negative Declaration in accordance with the applicable provisions of CEQA, Vesting Tentative Tract Map (TR 2993) and Conditional Use Permit SUB2008-00028 based on the revised findings in Exhibits A and C and revised conditions in Exhibits B and D.</li> </ol>			
(6) FUNDING SOURCE(S) Appellant Fees	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>90 Minutes</u> ) <input type="checkbox"/> Board Business (Time Est. <u>    </u> )			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Clerk's File	(15) BUSINESS IMPACT STATEMENT? Yes	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A    Date: <u>                </u>	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) District 4			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Brian Pedrotti, Planner III / 805-788-2788

VIA: Nancy Orton, Division Manager, Planning Division

DATE: 4/22/2014

SUBJECT: Hearing to consider an appeal by Integrity SLO of the Planning Commission's: 1) approval of Tentative Tract Map 2993 and Conditional Use Permit (SUB2008-00028) for a cluster subdivision of twenty-one parcels of one acre each and two open space parcels of 21.2 and 14.6 acres located on Zenon Way east of Palo Mesa and 2) adoption of the Mitigated Negative Declaration prepared for this project pursuant to the California Environmental Quality Act. District 4.

## **RECOMMENDATION**

It is recommended that the Board:

1. Hold the public hearing on the appeal of the approval of Tentative Tract Map 2993 and Conditional Use Permit (SUB2008-00028) by the Planning Commission as set forth in the attached Exhibits and staff report.
2. Adopt and instruct the chairman to sign the resolution affirming the decision of the Planning Commission and approving the Mitigated Negative Declaration in accordance with the applicable provisions of CEQA, Vesting Tentative Tract Map (TR 2993) and Conditional Use Permit SUB2008-00028 based on the revised findings in Exhibits A and C and revised conditions in Exhibits B and D.

## **DISCUSSION**

### **Background**

On December 12, 2013 and February 27, 2014, the Planning Commission heard a proposal by Cypress Ridge L.P. for a Vesting Tentative Tract Map (TR 2993) and Conditional Use Permit for a cluster subdivision. The Planning Commission approved the project with minor modifications to the conditions of approval. A timely appeal of the Planning Commission decision was filed by Integrity SLO on March 5, 2014. Staff received a supplemental packet from the appellant on March 13, 2014. The applicant and appellant have agreed in writing to this April 22, 2014 hearing based upon the County's noticing schedule.

The proposed project is a request by Cypress Ridge L.P. for a Vesting Tentative Tract Map (TR 2993) to allow a cluster subdivision of two existing 20.78 and 40.02 acre parcels resulting in twenty-one parcels of one acre each for the purpose of sale and/or development and two open space parcels of 21.2 and 14.6 acres. The project includes a proposal for a transfer of development credit (TDC) to transfer nine (9) residential credits to the property. The project includes off-site road improvements with the extension of Cypress Ridge Parkway from adjacent property to the west. The project will result in the disturbance of approximately 40 acres as a result of the access drive, access trails, and future residences on the proposed parcels. The division will create one on-site private road. The proposed project is within the Residential Rural (RR) land use category and is located at 852 Zenon Way, approximately 2,400 feet northeast of Callender Road, directly east of the community of Palo Mesa. The site is in the South County Inland planning area.

### **Appeal Issues**

In general, the appellant expresses concerns about the environmental setting for the Project, rather than concerns about impacts of the Project itself. While such concerns present policy issues for the Board – and more specifically for the Air

Pollution Control District, as discussed below – the Project is not responsible for mitigating the environmental setting.

**Issue 1.** The appellant states that the political, regulatory, and status quo landscape in regards to air quality on the Nipomo Mesa has radically changed since the Air Pollution Control District (APCD) submitted comments (dated October 27, 2008) on the project and that staff and Planning Commission failed to capture up to date air quality review by the APCD.

*Staff Response: The Project was re-referred to APCD following revisions made to the Project in 2012, and the APCD indicated in e-mails that their original comments and recommended mitigation measures were still appropriate for the project. Those emails are in the Planning Department file for the Project. The APCD has evaluated the project with the current model CalEEMod on March 24, 2014. The results were consistent with the 2008 evaluation and letter dated October 27, 2008 and confirmed the project would be below the CEQA significance thresholds. Standard construction particulate matter mitigation is required and as stated in the Mitigated Negative Declaration (MND), there should not be an increase in exceedance of the PM<sub>10</sub> standards due to project construction and operational particulate matter emissions, and there are no cumulative impacts.*

**Issue 2.** The appellant states that little assurance or confidence exists that project mitigations and conditions imposed on Cypress Ridge II addressing air quality will be effectively carried out. The appellant alleges that mitigation monitoring at the Woodlands development has not been enforced by the County. In addition, the appellant states that following a records request to the APCD for the most recent two quarterly environmental monitoring reports, monthly progress reports, and noncompliance reports of the Woodlands development, two were provided dated November 15, 2005 and February 13, 2006; the appellant stated these reports were over eight years old.

*Staff response: The Woodlands mitigations and a request for those records are not relevant to this project.*

*As discussed above regarding Air Quality mitigations for the Project, staff has confirmed that the APCD mitigations measures have been determined to be effective.*

**Issue 3.** The appellant states that the County, APCD and its Air Resources Control Board review major particulate matter concerns (i.e. thinning of eucalyptus at the Woodlands project) prior to new and additional dust emitting projects permitted on the Nipomo Mesa.

*Staff Response: The County and APCD have not been provided evidence that shows the eucalyptus at Woodlands has been thinned beyond what was allowed. In addition, that concern is not relevant to the Project. The Project includes conditions for replacement for any potential tree removals and impacts. Specifically, eucalyptus trees are located along the southern boundary of the project site and are not intended for removal. Rather, additional planting for vegetative screening has been required in accordance with recommendations by the Agricultural Commissioner.*

**Issue 4.** The appellant states that dirt roads cause 31 percent of PM<sub>10</sub> pollution in the county and that neither the county nor the APCD regulates dirt roads or even considers doing so.

*Staff Response: This overall concern is not applicable to the Project. There are no dirt roads proposed for the Project. Use of dirt roads during construction will be mitigated as required by the APCD conditions of approval. The Project as conditioned will implement dust mitigation and Best Management Practices to reduce potential dust creation from construction. Furthermore, the proposed project as identified in the Mitigated Negative Declaration does not conflict with adopted policies, plans and programs related to transportation. In addition to construction of the interior road (Cypress Ridge Parkway), frontage improvements will be required for Zenon Way; the applicant will be required to contribute to the South County Area 2 road fee program. The fees contributed to this program will partially finance the implementation of these improvements and mitigate cumulative impacts resulting from future development. Thus, the project will contribute a portion of paving to Zenon Way and will contribute to additional paving of dirt roads on the Nipomo Mesa in the future.*

**Issue 5.** The appellant states that in 2012, a total of 115 exceedances of the state 24-hour particulate matter standard were observed between three air monitoring stations on 72 different days. The appellant stated a single new particulate matter source will result in additional exceedances of state and/or federal ambient air quality standards, and will result in a cumulative net increase in this criteria pollutant.

*Staff Response: A review of the APCD 2012 Air Quality Report (cited by the appellant) shows that the appellant has*

overstated the information contained therein. The Report states that the Nipomo Mesa is not a non-attainment area for either PM<sub>10</sub> or PM<sub>2.5</sub>, although it could become one without APCD action. With implementation of the required standard particulate matter mitigation, there will not be an increase in exceedances of PM<sub>10</sub> standards due to project construction and operational particulate matter emissions.

**Issue 6.** The appellant states the Nipomo Mesa is on the threshold of exceeding PM air standards many days per year and that even modest particulate matter emissions from the project will increase the observed number of pollution exceedances. The appellant stated the project should mitigate all PM emissions if not attain a negative emission via off-site reductions.

*Staff Response:* The APCD distinguishes between three forecast zones on the Nipomo Mesa: CDF (60-95 exceedances/year), MESA2 (30-60 exceedances/year), and NRP (0-20 exceedances/year). The proposed project is located in the NRP zone which has the least amount of exceedance days per year of the three zones. The applicant will be required to implement APCD fugitive dust mitigation measures to mitigate identified air quality impacts to levels of insignificance for the Project.

**Issue 7.** The appellant states the project is likely to draw new residents who are “sensitive receptors” into a region the APCD and Health Department frequently advise is “unhealthy for sensitive groups.”

*Staff Response:* There is no evidence the project will attract “sensitive receptors” and the Project has not been identified as a senior-living project. A “sensitive receptor” is a term used in the Air Quality section of the Initial Study: “Will the project expose any sensitive receptor to substantial air pollutant concentrations.” There is no definition of “sensitive receptors” in the California Environmental Quality Act, although the case law generally refers to them as “children” and the “elderly.” The Initial Study states that where it is available, the significance criteria established by the applicable air quality management or APCD may be relied upon to make determinations of potential air quality impacts.

The San Luis Obispo APCD 2012 CEQA Handbook defines “sensitive receptors” as people that have an increased sensitivity to air pollution or environmental contaminants. Sensitive receptor locations include schools, parks and playgrounds, day care centers, nursing homes, hospitals and residential dwelling unit(s).

The Project is within the NRP forecast zone, which since 2003, has reported only one day of air quality in the “unhealthy for sensitive groups” range (which occurred in 2003). In this 2003 event, “unhealthy for sensitive groups” categorization was due to ozone pollution, not PM<sub>10</sub>. Therefore, in the future, it would be unusual to have air quality in the “unhealthy for sensitive groups” category due to particulate matter; however, it might be possible if San Luis Obispo County was impacted by a significant air quality event, such as a wildfire or an increase in ozone.

**Issue 8.** The appellant states a holistic particulate matter solution for the Nipomo Mesa is necessary.

*Staff Response:* A holistic particulate matter solution for the Nipomo Mesa is currently in place. Rule 1001 along with other APCD Particulate Matter rules regulate solutions for the Nipomo Mesa.

**Issue 9.** The appellant states the project converts Farmland of Statewide Importance to a non-agricultural use. The appellant stated the County Agricultural Department considers the conversion of the on-site soil resources to be a potentially significant impact.

*Staff Response:* The proposed project was referred to the Agricultural Commissioner's office. A referral response was received August 10, 2009 which stated development on soils of statewide importance would result in a potentially significant impact. The applicant subsequently revised the proposed project to nearly eliminate residential parcel development on the designated “Farmland of Statewide Importance”, as well as provide greater distance buffers from the adjacent agricultural operations. The Agricultural Commissioner's office reviewed the changes to the project and in a letter dated April 25, 2013 (L. Auchinachie) stated the applicant had addressed concerns related to soils. Several additional measures were required and included to mitigate impacts to levels of insignificance, including planting of new screening vegetation and a disclosure of the county's right to farm ordinance.

**Issue 10.** The appellant states proximity to farmland causes dust, pesticide, farm traffic and noise exposure to future residents and creates nearby conflicting uses which significantly impacts both agriculture and project residents.

*Staff Response: The Project, as conditioned (Condition No. 38(o)) will require the applicant to include a disclosure of the county's right to farm ordinance (Chapter 5.16) and state law (Section 11010 California Business and Professions Code) at the time of sale of real property.*

**Issue 11.** The appellant states the project will cause additional federal and state (NAAQS and CAAQS) ambient air quality standard violations. The appellant requested particulate matter and greenhouse gas emissions be re-evaluated as the comments from the APCD are out of date.

*Staff Response: The APCD does not agree with the appellant's statement. The current evaluation is valid. The APCD re-evaluated the impacts of the Project on March 24, 2014 with the current model CalEEMod, which confirmed the project based on land use and intensity levels would be under the CEQA significance thresholds, which is consistent with the 2008 evaluation and letter.*

**Issue 12.** The appellant states the project will create or subject individuals to objectionable odors.

*Staff Response: See staff response to Issue 10.*

**Issue 13.** The appellant states the project will be inconsistent with the APCD's Clean Air Plan.

*Staff Response: This inconsistency is not considered a significant impact for the following reasons: 1) the proposed density of this subdivision is still consistent with what was assumed in the last update of the Clean Air Plan, which, based in part on this density, approved the necessary control measures to achieve acceptable air quality attainment in the future; and 2) standard forecast modeling (e.g., CalEEMod) identifies that vehicles in the near future will produce substantially lower emissions (e.g., use of electric, hybrid and advanced technology vehicles).*

**Issue 14.** The appellant states the project will result in a cumulatively considerable net increase of criteria pollutants in an area already in non-attainment for particulate matter. The appellant requested the APCD re-evaluate Particulate Matter and Green House Gas emissions.

*Staff Response: See staff response to Issue 11.*

**Issue 15.** The appellant requested the APCD and the Air Resources Control Board re-evaluate the project based on the difference in air quality circumstances that now exists on the Nipomo Mesa.

*Staff Response: See staff response to Issue 11.*

**Issue 16.** The appellant states the proposed project will reduce the extent, diversity or quality of native or other important vegetation; specifically eucalyptus which is recognized as important particulate matter dust filters and also provides overwintering cover for dwindling Monarch butterfly populations.

*Staff Response: The eucalyptus stands as identified in the February 27, 2014 staff report will remain. No thinning or removal of the eucalyptus is proposed. The Agricultural Commissioner has also requested vegetative screening be installed between the pedestrian trail and the proposed greenhouse nursery to the south.*

*The appellant has not presented evidence that the monarch butterfly meets the criteria of CEQA Guidelines Section 15380 as rare. There is no evidence that this site has a history or the qualities required to provide a roosting site. While eucalyptus provides some nectaring opportunities to monarchs there are still substantial eucalyptus trees in the area.*

**Issue 17.** The appellant states the proposed project will interfere with the movement of resident or migratory fish or wildlife species, or factors which could hinder the normal activities of wildlife; specifically identifying eucalyptus as a necessary element for the migration and movement of the Monarch Butterfly.

*Staff Response: The eucalyptus stands located at the southern perimeter of the site will remain and will not be removed as part of the proposed project. Additionally, Monarchs use eucalyptus throughout the San Luis Obispo County and no evidence suggests this site is a roosting site of important nectaring area. Ornamental landscaping will provide additional nectaring opportunities for the Monarch butterfly.*

**Issue 18.** The appellant states the thinning or removal of eucalyptus should be considered an unmitigated significant impact and conflict with regional plans or policies to protect sensitive species, or regulations of the California Department of Fish & Wildlife or U.S. Fish and Wildlife Services.

*Staff Response: See staff response to Issue 16.*

**Issue 19.** The appellant states the proposed project adds sensitive receptors to an area impacted and in non-attainment for PM<sub>10</sub> and PM<sub>2.5</sub> where the source is alleged to originate from Off-Highway Vehicle (OHV) use at Oceano Dunes State Vehicular Recreation Area (ODSVRA). The appellant states that since the passage of APCD Board Rule 1001, ODSVRA is under legal attack which could affect access to the state park and that this conflict should be considered a significant impact until the legal issues have been resolved.

*Staff Response: The entire San Luis Obispo County is designated non-attainment of the state PM<sub>10</sub> standard. The APCD has been investigating elevated particulate levels on the Nipomo Mesa for the past decade. Studies performed by the APCD in the area have shown the source of the elevated particulate matter pollution to be windblown dust from the open sand areas of the Oceano Dunes State Vehicular Recreation Area, and that emissions are increased by off-road vehicle activity. The APCD approach to attainment of the PM<sub>10</sub> standard is via APCD particulate matter rules and regulations. Rule 1001 specifically applies to blowing dust from coastal dunes. Rule 1001 was developed and implemented as a result of the studies in the Nipomo Mesa area as a means to mitigate the blowing dust impacts. The litigation filed by Friends of Oceano Dunes against the APCD challenging Rule 1001 has been resolved with a comprehensive proposed Consent Decree, mediated by the California Air Resources Board, which provides for immediate enforcement of Rule 1001 and mitigation measures to reduce PM<sub>10</sub>. The consent decree addresses dispute addresses a special master and a dispute resolution process. Recently, the APCD and California State Parks jointly signed a "consent decree" agreement to preserve much of Rule 1001. That decree is included within the materials for this hearing. See response to Finding E (Issue 23) regarding the Mesa Alliance litigation.*

**Issue 20.** The appellant states the proposed project has the potential to degrade the quality of the environment and threatens to eliminate a plant or animal community, or reduce the number or restrict the range of a rare or endangered plant or animal, specifically the Monarch butterfly and its use of eucalyptus habitat.

*Staff Response: See staff response to Issue 16.*

**Issue 21.** The appellant states project condition 38(s) AQ-3 Fugitive PM10 Mitigation Measure *i* through *ix* be included, as follows:

- Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site.
- Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.

*Staff Response: Project conditions 38(s) AQ-3 Fugitive PM10 Mitigation Measure i through ix reflect recommended conditions by APCD.*

**Issue 22.** The appellant states in 2013, activists on the Nipomo Mesa circulated the APCD's complaint form and encouraged the filing of complaints pertaining to particulate matter and/or dust. The appellant stated the numbers, types, and location of any pertinent complaints should be produced and evaluated in reviewing whether emissions from this project constitute a potentially significant impact.

*Staff Response: The APCD collected and summarized complaints from Cypress Ridge and found nine (9) verified complaints for the period between 1999 and 2013 (Fourteen years):*

<b>Date</b>	<b>Complaint</b>
<b>7/1/2013</b>	Odor
<b>8/27/2010</b>	Odor from lake
<b>8/26/2010</b>	Odor from Lake
<b>6/3/2010</b>	Dust from ODSVRA
<b>5/28/2010</b>	Dust from ODSVRA
<b>8/6/2008</b>	Visible Smoke & Odors
<b>8/15/2006</b>	Visible Smoke
<b>9/20/2004</b>	Dust
<b>8/31/2000</b>	Eucalyptus burn

**Issue 23.** The appellant states Findings A, D, E, and F pertaining to the Conditional Use Permit are not supportable.

Finding A (Environmental Determination): The Project has numerous significant effects on the environment, most prominently, emission of particulate matter fugitive dust in a non-attainment area. Also, potential impacts to Monarch Butterfly and migratory birds if any trees are removed.

*Staff Response: See staff responses to Issues 11, 16, and 19.*

Finding D (Detriment to health, safety or welfare): The Project both emits particulate matter and fugitive dust and will introduce new sensitive receptors into a non-attainment area considered unhealthy for sensitive receptors by the APCD and County Health Department.

*Staff Response: See staff response to Issue 19.*

Finding E (Project inconsistent with neighborhood or conflict with surrounding land and uses): The project is inconsistent with surrounding agricultural uses as well as Oceano Dunes State Vehicular Recreation Area (as long as legal disputes and litigation pertaining to particulate matter continue). Local Cypress Ridge I residents have brought "dust nuisance" litigation against the county.

*Staff Response: See staff response to Issues 9, 10, and 19. In addition, on February 27, the Mesa Alliance (consisting of Cypress Ridge I residents) sued the County and the State Parks Department for alleged failure to enforce Rule 1001. The County has responded by denying the allegations of the complaint. The statements in that complaint remain allegations until proven or disproven in the litigation.*

Finding F (Traffic Volume): The project may generate traffic that conflicts with local agriculture operations, creating an unsafe conflict between residential users and slow-moving farm vehicles.

*Staff Response: See staff response to Issue 4. Transportation-related impacts were evaluated in the MND. The project is within the "South County Area 2" Circulation Fee area which will implement necessary improvements to Zenon Way and mitigate cumulative impacts resulting from future development. No other significant impacts were identified and no other specific traffic-related mitigation measures are necessary. In addition, conflicts between agricultural uses and neighboring uses were reviewed by the Agricultural Commissioner and evaluated in the MND. The Agricultural Commissioner recommended several measures that have been incorporated into the proposed project including: agricultural buffers to protect adjacent agricultural resources as well as future residents, and relocation of proposed residences off of Farmland of Statewide Importance. Several additional measures were required to mitigate impacts to a level of insignificance, including planting of new screening vegetation, and disclosure of the county's right to farm ordinance. These measures were found to minimize future conflict and reduce the potential impact to agricultural resources.*

In summary, staff has carefully reviewed the issues raised by the appellant. Staff's review confirms that the conclusions of the MND remain valid, that there is no new evidence regarding potential environmental impacts and no new mitigations are required.

## **OTHER AGENCY INVOLVEMENT/IMPACT**

The project was referred to: South County Advisory Council, Public Works, Environmental Health, Agricultural Commissioner, County Parks, Cal Fire, Nipomo Community Services District, APCD, California Department of Transportation, General Services (Parks), City of Arroyo Grande, Regional Water Quality Control Board.

### **BUSINESS IMPACT STATEMENT**

Denial of this appeal would mean the Planning Commission approval for this project would stand. As a result, some businesses in the Building Design and Construction cluster identified in the San Luis Obispo County Clusters of Opportunity Economic Strategy (November 2010) would benefit when the twenty-one residences are designed and built.

### **FINANCIAL CONSIDERATIONS**

The appeal was processed using the applicant's appeal fees.

### **RESULTS**

Affirming the Planning Commission decision by denying the appeal will mean the Mitigated Negative Declaration, Vesting Tentative Tract Map (TR 2993) and Conditional Use Permit SUB2008-00028 are approved. Upholding the appeal would mean the Planning Commission's approval of the Tentative Tract Map and Conditional Use Permit are denied.

### **ATTACHMENTS**

1. Attachment 1 - Board of Supervisors Resolution with findings and conditions
2. Attachment 2 - Appeal letter and attachments
3. Attachment 3 - Planning Commission Minutes: December 12, 2013 and February 27, 2014
4. Attachment 4 - Planning Commission Staff Report for February 27, 2014 (Includes December 12, 2013 Staff Report in its entirety) [Clerk's File]